

REMARKS

Claims 1, 3, 4, 7, 13-16, and 19-40 are pending in the current application. Claims 1, 3, 4, 7, 13-16, and 19-40 currently stand rejected, and claims 1, 7, 13, 19, 24, 30, 36 have been amended. Reconsideration and allowance of claims 1, 3, 4, 7, 13-16, and 19-40 are respectfully requested in light of the preceding amendments and following remarks.

Interview Summary

Applicants thank the Examiner for his time and consideration in granting and conducting the interview of December 30, 2009. During the interview, the parties discussed the current rejections to the claims and the non-combinability of the references. No agreement was reached, and Applicants further argue points of impermissible modification and non-combinability below.

Claim Rejections – 35 U.S.C. § 112

Claims 1, 3, 4, 7, 13-16, and 19-40 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner alleges that the claim term “control information unit including control information required to reproduce/record the main data” is not supported by the original specification. Although Applicants disagree based on FIG. 5, the claims have been amended to remove this term from all independent claims. Withdrawal of the rejection under 35

U.S.C. § 112 first paragraph to claims 1, 3, 4, 7, 13-16, and 19-40 is respectfully requested.

Claim Rejections – 35 U.S.C. § 103

Claims 1, 3, 4, 7, 13-16, and 19-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US Pat 6,938,162 to Nagai et al. (“Nagai”) in view of US Pat 5,737,286 to Timmermans et al. (“Timmermans”) and US Pat 7,266,074 to Kim et al. (“Kim”). Applicants respectfully traverse this rejection for the reasons detailed below.

With regard to claim 1, Applicants initially note that the claim has been amended to recite that a control information unit is “**repeatedly recorded** in a second data field area.” The Examiner applies a content information area 502 of Nagai for the recited “control information unit.” Applicants respectfully submit that the content information area 502 in Nagai **is a single area** recorded once at a single location. See Nagai, FIG. 5. As such, Nagai is lacking a “repeatedly recorded” “control information unit” storing elements as recited in claim 1 as amended.

Applicants and the Examiner continue to disagree as to whether evidence, by way of declaration, is required to show that a modification is not possible or renders a prior art reference inoperable. Applicants reply further only to recast previous arguments as general teaching away. To wit, Nagai stores all of its descrambling keys and indicators of the keys conventionally and discusses the advantages of having all descrambling information in a

same, irreproducible area. See Nagai, Col. 13, ll. 24-46; Col. 54, ll. 56-65. The wobbled pattern in Timmermans, however, is present throughout the entire disc and main data. See Timmermans, FIGS. 1a & 1b; Col. 3, l. 40 – Col. 4, l. 33. Because the modulation of the pattern of pits of content data in Timmermans is the decryption key, the key must be necessarily stored across several, reproducible areas of content data. That is, it is impossible to meet the single-area requirements of Nagai with the technology of Timmermans. Because a combination of Nagai with Timmermans is taught away from by Nagai, these references cannot be combined to render any claim obvious under § 103(a). Applicants respectfully submit that arguments of teaching away, without external evidence, are routinely accepted as a rebuttal of obviousness by combination under § 103. See MPEP § 2145. Applicants earnestly solicit the Examiner to consider and respond to these arguments without further evidence by way of declaration.

The Examiner also maintains that Nagai alone teaches “copy protection indicating information indicating if the computer readable medium contains the copy protection information or if the computer readable medium does not contain the copy protection information in the first area” and **“the copy protection information is present depending on the indication of the copy protection indicating information”** by descramble keys and a stored value of a number of descramble keys. The Examiner replies that Nagai contemplates recording media lacking any encryption, as evidenced by its flag for showing whether the main data is scrambled. The Examiner further reasons that a

number of keys reading zero in Nagai would exist in the non-scrambled situation, further indicating that the data was not scrambled.

Applicants respectfully submit that nothing in Nagai discloses or suggests the situation where no keys, and a stored "zero" value for a number of keys, exist. See, e.g., Nagai, Col. 3, ll. 55-64; Col. 13, ll. 8-46 (description of encrypted data requiring key applicable to all embodiments); Claims 1, 6, 10-13, 20-23, 26 (all claims requiring decipher key). Even when the data in Nagai is not encrypted, **Nagai does not teach retaining, or storing a specific zero value in, its key number field while leaving its actual key fields blank.** Even if, for manufacturing simplicity/consistency, all fields in area 107 of Nagai were retained regardless of encryption presence, there would be no further simplicity/consistency gained by having to record specific values in each useless key number field in the unscrambled case, especially when the keys themselves are not retained. Yet, in order to meet the recited copy protection indicating information, the Examiner arbitrarily modifies Nagai to omit any keys yet retain key values and store a zero therein when not scrambling. Nagai never suggests such modification or how to achieve such modification.

Because Nagai, alone or in combination with Timmermans and Kim, fails to teach or suggest every element of claim 1 and cannot be modified to do so, these references cannot anticipate or render obvious claim 1. Claims 7, 13, 19, 24, 30, and 36 are equally allowable over these references for reciting the same unique elements of claim 1, discussed above. Claims 3, 4, 14-16, and 20-23,

25-29, 31-35, and 37-40 are allowable at least for depending from an allowable base claim. Withdrawal of the rejection to claims 1, 3, 4, 7, 13-16, and 19-40 under 35 U.S.C. § 103(a) is respectfully requested.

CONCLUSION

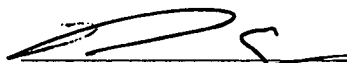
Accordingly, in view of the above amendments and remarks, reconsideration of the rejections to and allowance of each of claims 1, 3, 4, 7, 13-16, and 19-40 in connection with the present application is earnestly solicited. Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Ryan Alley at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. §1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKY, & PIERCE, P.L.C.

By



Ryan E. Alley, Reg. No. 60,977
Gary D. Yacura, Reg. No. 35,416
P.O. Box 8910
Reston, Virginia 20195
(703)668-8000

GDY/REA: tlt